

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	WT Docket No. 05-211
Implementation of the Commercial Spectrum	)	
Enhancement Act and Modernization of the	)	
Commission's Competitive Bidding Rules and	)	
Procedures	)	

**COMMENTS OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. ("T-Mobile") hereby submits its comments in response to the Federal Communications Commission's Notice of Proposed Rule Making regarding implementation of the Commercial Spectrum Enhancement Act ("CSEA")<sup>1</sup> and changes to the competitive bidding rules.<sup>2</sup> T-Mobile is an experienced auction participant and prospective bidder in the anticipated June 2006 auction for Advanced Wireless Services ("AWS") spectrum. As such, T-Mobile applauds the FCC's effort to make an additional 90 MHz of mobile spectrum available in the marketplace for the benefit of competition and consumers, and urges the FCC to implement CSEA and changes to its bidding rules in a manner that neither impacts the planned timing of the AWS auction nor interferes with the rapid, efficient and successful conclusion of that auction. Our comments on the specific *Notice* proposals are set forth below.

T-Mobile has a significant interest in the implementation and modification of the Commission's bidding rules for the auction of AWS spectrum licenses. T-Mobile, through one

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<sup>1</sup> Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004).

<sup>2</sup> Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, *Declaratory Ruling and Notice of Proposed Rule Making*, WT Docket No. 05-211 (June 14, 2005) ("*Notice*").

of its predecessors-in-interest or in joint ventures with designated entities, has participated in virtually all of the Commission's major auctions for broadband mobile radio service spectrum. Moreover, we have been a significant participant in the development of service and auction rules, as well as establishment of a band plan for AWS licenses.<sup>3</sup> T-Mobile fully anticipates participating in the upcoming auction for AWS spectrum, currently planned for June of 2006. Given the applicability of CSEA to the 1710-1755 MHz band available in the AWS auction, T-Mobile therefore has an vital interest in the policies adopted in this proceeding.

The AWS auction is critical to the continued competitiveness of the broadband mobile data and voice marketplace for U.S. consumers. Currently, Commercial Mobile Radio Service ("CMRS") carriers are constrained to approximately 180 MHz of available spectrum—two 25 MHz licenses in the 800 MHz cellular bands, approximately 10 MHz of 800 MHz Specialized Mobile Radio Service ("SMR") spectrum, and the 120 MHz of PCS spectrum at 1.9 GHz. Additional CMRS spectrum is potentially available at 700 MHz and at 2 GHz in the future, but incumbency and interference concerns limit access to this spectrum in the near-term. The recent wave of industry consolidation, which has allowed other national carriers to aggregate upwards of 70 MHz of spectrum in certain markets, only underscores the need for additional spectrum for smaller carriers such as T-Mobile.

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<sup>3</sup> See, Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, WT Docket No. 02-353, FCC 05-149 (Aug. 5, 2005). See also, FCC Modifies AWS Spectrum, Telecom Policy Report, at [http://www.findarticles.com/p/articles/mi\\_m0PJR/is\\_2005\\_August\\_8/ai\\_n14871521](http://www.findarticles.com/p/articles/mi_m0PJR/is_2005_August_8/ai_n14871521) (Aug. 8, 2005) ("The new action [to modify the AWS band plan, licensing and service rules] was based on petitions for changes and additional flexibility proposed by the Rural Cellular Association (RCA), by T-Mobile and others interesting in the 3G mobile network technology's potential to converge voice, data, video and broadband offerings."); Drew Clark, FCC Order Builds Momentum for Wireless Auction, National Journal's Telecom Update, at <http://www.njtelecomupdate.com/lenya/telco/live/tb-LIWX1124224076060.html> (Aug. 15, 2005) (noting that "the agency was urged to [modify the rules for the AWS auction] by the Rural Communications Association, a group of cellular carriers, and T-Mobile USA.").

The AWS auction is a significant opportunity that provides for an additional 90 MHz of spectrum, an increase of 50 percent over the broadband mobile spectrum available today, and, for the first time since 1997, an auction that includes a full nationwide footprint of licenses. Indeed, partially at the urging of T-Mobile and Rural Telecommunications Group (RTG), the AWS auction also includes a variety of license sizes that vary in geography and bandwidth. The variety available under the revised AWS allocation scheme will enable bidders both to acquire contiguous expansion spectrum throughout regions and to target specific markets where they are spectrum-constrained.<sup>4</sup> Because of the potential benefits of the AWS auction to consumers in terms of strengthening competition and promoting advanced mobile services, T-Mobile strongly urges the FCC to hold firm on the proposed auction schedule. As Chairman Martin noted, the adoption of the recent Order on Reconsideration in the AWS proceeding will “enable carriers to provide a wide range of new and better services, including in rural areas,” and “allow the Commission to move forward expeditiously” on the AWS auction.<sup>5</sup> This sentiment has been echoed by Commissioners Abernathy, Copps, and Adelstein.<sup>6</sup>

As noted in the *Notice*, the fundamental purpose of CSEA was to facilitate the relocation of incumbent government systems at 1710-1755 MHz (as well as other bands not in the AWS

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<sup>4</sup> See Letter from Thomas J. Sugrue, T-Mobile USA, Inc., and Caressa D. Bennet, Rural Telecommunications Group, Inc., to Marlene H. Dortch, FCC, WT Docket No. 02-353 (Mar. 11, 2005).

<sup>5</sup> See Statement of Chairman Kevin J. Martin, Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, WT Docket No. 02-353, FCC 05-149 (Aug. 5, 2005).

<sup>6</sup> See, e.g. Statement of Commissioner Michael J. Copps, Statement of Commissioner Jonathan S. Adelstein, Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Order on Reconsideration*, WT Docket No. 02-353, FCC 05-149 (Aug. 5, 2005) (stating, respectively “I am committed to sticking to our schedule and conducting the AWS auction as soon as possible” and “we do not want to see the AWS auction unnecessarily delayed.”).

auction) by establishing a fund derived from auction dollars to finance and manage the cost of repurposing the band from Federal to commercial use.<sup>7</sup> Under CSEA, among other things, the FCC is required to coordinate with the National Telecommunications and Information Administration (“NTIA”) to obtain a relocation cost estimate for any auction of prior Federal spectrum, and to adopt rules that ensure any auction raises 110 percent of that estimate in “total cash proceeds.” Under the statute, if the auction does not achieve 110 percent of the “total cash proceeds,” the “the Commission shall cancel the auction.”<sup>8</sup> At a time when mobile spectrum is so critically needed to enable broadband applications, the impact of voiding an auction under CSEA would be highly detrimental to the mobile marketplace.

Given the clear importance of the AWS auction to the American public, and the importance of CSEA implementation to the AWS auction, T-Mobile’s principal concern is ensuring that the AWS auction moves forward as planned and in a manner that, consistent with CSEA, provides the greatest degree of efficiency and certainty for bidders. The Commission should, in implementing CSEA, thus balance the need to ensure the required level of funds necessary for Federal relocation with a balanced and realistic scheme that provides bidders with the most certainty possible. In the end, the government and industry all want the same thing—a successful auction that finances relocation adequately while also making commercial spectrum available as rapidly as possible.

As an initial matter, T-Mobile believes the Commission has struck the appropriate balance with respect to the Declaratory Ruling incorporated with the *Notice*. In the Declaratory Ruling, the Commission interpreted “total cash proceeds,” for purposes of CSEA, to mean the

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<sup>7</sup> *Notice* at ¶5.

<sup>8</sup> CSEA, §203(b) (*codified at* 47 U.S.C. §309(j)(15(B))).

high bids for a particular auction, less the bidding credits due designated entity bidders and less Tribal Lands Bidding Credits awarded post auction.<sup>9</sup> The Commission also concludes that it should set auction reserves in order to ensure that total cash proceeds meet CSEA requirements for specific auctions. T-Mobile shares the Commission’s interpretation that its approach is consistent with both Congressional intent and the plain meaning of the words of the statute.

The Declaratory Ruling also notes several other issues “involved with implementing reserve prices for auction subject to CSEA may arise.”<sup>10</sup> Among those is whether total cash proceeds “can be assessed on a license-by-license basis.”<sup>11</sup> The Commission determined that it “will leave consideration of such issues to later actions, including possible auction- or service-specific rule making proceedings, subsequent declaratory rulings regarding questions of statutory interpretation, or adoption of specific auction procedures by the Commission.”<sup>12</sup>

While T-Mobile generally concurs with the flexible approach adopted by the FCC, the AWS auction is a clear case where license-by-license procedures cannot be rationally applied due to the constraints on this auction to achieve 110 percent of the relocation cost value. First, determining CSEA compliance by looking at the auction as a whole is simple to implement and understand—at some point during the auction, the Commission may simply announce that

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<sup>9</sup> T-Mobile certainly concurs with the FCC that attempting to factor defaults into total cash proceeds would leave license bidders at risk well past auction closing. Accordingly, certainty favors the FCC’s interpretation that, because the US Treasury will ultimately receive the money attributable to defaults, net winning bids should be the yardstick for CSEA compliance.

<sup>10</sup> *Notice* at ¶ 13.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

aggregate bids, taking into account bidding credits, have exceeded CSEA minimums.<sup>13</sup> On the other hand, invalidating specific AWS licenses could leave bidders unable to realize integrated build-out plans and other synergies from particular packages of licenses.<sup>14</sup> Determining compliance on a license-by-license basis may also lead to the anomalous result that while total auction revenues exceed total CSEA requirements, a pre-auction CSEA target for a particular license may not have been met, requiring the FCC to nonetheless void that license result.<sup>15</sup>

Because the CSEA should maximize certainty for auction participants without causing delay, T-Mobile believes that administration of Tribal Land Bidding Credits should be distributed on a first-come, first-served basis. In this regard, the *Notice* proposes two other possible solutions to the issue of factoring Tribal Lands Bidding Credits into CSEA revenue requirements: a capped *pro rata* distribution scheme or a plan based on the maximum potential awards. T-Mobile is not in favor of a mechanism that would inordinately delay finalization of auction results (such as assessing credits as they are done now), or that would potentially overstate the available bidding credits and thereby invalidate the results of an auction that would

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<sup>13</sup> While it may be possible in some other CSEA context to identify Federal relocation costs for an auctionable spectrum band on a license specific basis, the AWS relocation estimates are for the band as a whole, and cannot, given the cost-sharing implications of Federal use spanning across multiple markets and spectrum bands, be rationally allocated to specific licenses. Indeed, the benefit of the CSEA is that it establishes a fund that aggregates these costs for the entire auction. Applying license-by-license valuation in this context would run counter to that benefit.

<sup>14</sup> For example, an applicant in a region might bid on a package of licenses that includes a core metropolitan area, as well as suburban and rural areas surrounding the denser market. If license results were voidable on a license-by-license basis, the bidder may be placed in the situation of winning the areas around a central core, but having its winning bid for the core territory voided under CSEA. Given the interdependencies between markets, which may vary from carrier to carrier, this is clearly a result to be avoided.

<sup>15</sup> For example, if bidders exceed the CSEA target for license *A* by \$1,000, but are under the CSEA target for license *B* by \$1,000, assessing compliance on a license-by-license basis would require voiding the bidding results for license *B*, even though assessing compliance on an overall auction basis would allow the result to stand.

otherwise meet CSEA requirements. Accordingly, T-Mobile believes the capped *pro rata* or first-come, first-served plans are better policy for the AWS auction, and are in the public interest. Of those two schemes, on balance, T-Mobile prefers the first-come, first-served proposal because such a plan would better gain early, and final, resolution of outstanding Tribal Lands bidding credit valuations.

The *Notice* also proposes to modify certain other general auction rules outside of the CSEA context, including existing bidding rules to permit the FCC on an auction-specific basis to raise the maximum withdrawal and post-auction default penalties from 3 percent to 20 percent of the withdrawn bid.<sup>16</sup> Because of the especially pernicious effect of bid withdrawals in the AWS auction, T-Mobile strongly supports raising the bid withdrawal and default penalties from 3 percent to 20 percent, as the FCC has proposed.<sup>17</sup> As the Commission has observed, most recently there have been “a disproportionate number of withdrawals late in our auctions, indicating that some bidders have been placing and then withdrawing bids primarily to discourage potential or existing market competitors from seeking to acquire licenses.”<sup>18</sup> The Commission further noted that “bidders continue to default on their payment obligations.”<sup>19</sup> If the FCC is having this experience, clearly, the current 3 percent penalty is insufficient as an economic deterrent against strategic bidding. Under these circumstances, it appears clear that

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<sup>16</sup> 47 C.F.R. ¶1.2104(g).

<sup>17</sup> T-Mobile notes, however, that widespread late bid withdrawals and defaults could negatively impact efforts to meet optimal relocation timeframes, given the delay in receipts for late bid withdrawal and default payments.

<sup>18</sup> *Id.* at ¶ 31.

<sup>19</sup> *Id.*

stiffer monetary amounts should be assessed to deter strategic behavior, especially for this important auction.

As discussed herein, T-Mobile believes strongly that CSEA implementation should be undertaken in a manner that provides clear guidance to bidders and offers certain resolution of the auction results in a timely manner. Moreover, T-Mobile continues to emphasize that CSEA and other auction changes should be implemented as expeditiously as possible to avoid any possible delay to the proposed timing for the AWS auction in particular.

Respectfully submitted,

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